

ORDER NO. 1944

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Competitive Product Prices  
Global Expedited Package Services 3 (MC2010-28)  
Negotiated Service Agreement

Docket No. CP2014-18

ORDER APPROVING A GLOBAL EXPEDITED PACKAGE SERVICES 3  
NEGOTIATED SERVICE AGREEMENT

(Issued January 3, 2014)

I. INTRODUCTION

The Postal Service seeks to include a Global Expedited Package Services (GEPS) 3 contract (Agreement) within the GEPS 3 product.<sup>1</sup> For the reasons discussed below, the Commission approves the Postal Service's request.

II. BACKGROUND

The Commission approved the addition of the GEPS Contracts product to the competitive product list following consideration of a Postal Service filing in Docket No.

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<sup>1</sup> Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, December 20, 2013 (Notice).

CP2008-5 based on Governors' Decision No. 08-7.<sup>2</sup> The Commission later added GEPS 3 to the competitive product list and authorized the agreement filed in Docket No. CP2010-71 to serve as the baseline agreement for comparison of potentially functionally equivalent agreements.<sup>3</sup>

*Effective date; term.* The Postal Service will determine the effective date of the Agreement following regulatory approval, and notify its contracting partner of this date no later than 30 days after receiving regulatory approval from oversight entities. Notice, Attachment 1 at 7 (Article 12). The Agreement expires one calendar year after the effective date or the last day of the month that is one calendar year after the effective date, whichever is later, unless terminated sooner pursuant to contractual terms. *Id.*

In Order No. 1923, the Commission provided public notice of the Postal Service's filing; established the instant docket for consideration of the filing's consistency with applicable statutory requirements and Commission regulations; appointed a Public Representative; and provided interested persons with an opportunity to comment.<sup>4</sup>

### III. THE POSTAL SERVICE'S POSITION

The Postal Service asserts that its filing demonstrates that the Agreement complies with the requirements of 39 U.S.C. § 3633, is functionally equivalent to the baseline agreement, and requests that the Agreement be included within the GEPS 3 product. Notice at 2. It also states that the Agreement and the baseline agreement possess similar cost and market characteristics and the same functional terms, but prices may differ. *Id.* at 3-4. The Postal Service identifies numerous differences between the Agreement and the baseline agreement, but asserts that these differences

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<sup>2</sup> See Docket No. CP2008-5, Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008.

<sup>3</sup> See Docket Nos. MC2010-28 and CP2010-71, Order No. 503, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010.

<sup>4</sup> Notice and Order Concerning Additional Global Expedited Package Services 3 Negotiated Service Agreement, December 23, 2013 (Order No. 1923).

do not affect the fundamental service being offered or the fundamental structure of the Agreement.<sup>5</sup>

#### IV. COMMENTS

The Public Representative filed comments in response to Order No. 1923.<sup>6</sup> No other comments were received. The Public Representative's review of the Notice, the Agreement, and the supporting financial model filed under seal leads her to conclude that the Agreement is functionally equivalent to the baseline agreement. In addition, she states that it appears the negotiated prices in the Agreement should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633. PR Comments at 3.

#### V. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement: (1) is functionally equivalent to the baseline agreement; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules.

*Functional equivalence.* The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreement; meets the pricing formula and falls within the classification established in Governors' Decision No. 08-7; and comports with 39 U.S.C. § 3633 and related Commission rules. It also has considered the Public Representative's comments.

The Commission's review reveals that the main differences consist of transactional matters, such as the customer's name and address; options for tendering mail; indemnity and postage payment; and updates to reflect legal considerations, such

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<sup>5</sup> *Id.* at 4-7. Differences include, among others, revisions to two of the introductory paragraphs of the Agreement; revisions to numerous existing articles; and new, deleted, and renumbered articles. *Id.*

<sup>6</sup> Public Representative Comments on Postal Service Notice of Filing an Additional Global Expedited Package Services 3 Negotiated Service Agreement, December 30, 2013 (PR Comments).

as a new article concerning intellectual property, co-branding, and licensing and revised provisions concerning indemnity and limitation of liability. They also reflect conforming changes to reflect revised names of product offerings and renumbering of various articles in the Agreement. *See generally* Notice, Attachment 1. These differences are either routine or expected as part of the contracting process, or otherwise appropriate, given changed circumstances since the baseline agreement was filed. Moreover, the Agreement and the baseline agreement share the same cost attributes and methodology, so the relevant characteristics of the Agreement are similar to the baseline agreement. The Commission concludes that the Agreement is substantially similar to the baseline agreement and that the differences between them do not undermine a finding of functional equivalency. The Commission therefore finds that the Agreement may be included within the GEPS 3 product. A conforming revision to the Mail Classification Schedule appears in an attachment to this Order.

*Cost considerations.* The Commission has reviewed the Postal Service's filing, including supporting financial analysis provided under seal. The Commission also has reviewed the Public Representative's Comments. Based on this review, the Commission finds that the Agreement should cover its attributable costs. 39 U.S.C. § 3633(a)(2). Additionally, the Commission finds that the Agreement should not result in competitive products being subsidized by market dominant products, satisfying the requirements of 39 U.S.C. § 3633(a)(1). It also finds the Agreement should have a positive effect on the contribution of competitive products to institutional costs, in furtherance of 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with the section 3633(a) provisions applicable to rates for competitive products.

*Follow-up submissions.* The Postal Service shall promptly notify the Commission of the effective date of the Agreement. Upon termination of the Agreement by either party, the Postal Service shall promptly inform the Commission of this development and the date of termination. In addition, within 30 days of the termination of the Agreement,

the Postal Service shall file costs, volumes, and revenues associated with the Agreement, including any penalties paid, disaggregated by weight and country group.

#### VI. ORDERING PARAGRAPHS

*It is ordered:*

1. The Agreement filed in Docket No. CP2014-18 is included within the Global Expedited Package Services 3 (MC2010-28) product.
2. The Postal Service shall promptly notify the Commission of the effective date of the Agreement.
3. The Postal Service shall promptly notify the Commission of termination of the Agreement by either party.
4. Within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues, including any penalties paid, disaggregated by weight and country group.

By the Commission.

Shoshana M. Grove  
Secretary

## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

**PART B—COMPETITIVE PRODUCT LIST**

2500            Negotiated Service Agreements

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2510            Outbound International

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2510.3        Global Expedited Package Services (GEPS) Contracts

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2510.3.6      Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- GEPS 3

*Baseline Reference*

Docket Nos. CP2010-71 and MC2010-28

PRC Order No. 503, July 29, 2010

*Included Agreements*

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CP2014-18, expires TBD

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